

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PIONNEER BUSINESS SERVICES, LLC
d/b/a FOUR CORNERS AVIATION
SERVICES

Plaintiff/Counter-Defendant,

v.

VISTAJET US, INC.,

Defendant/Counter-Plaintiff.

Case No. 1:22-CV-6206 (ALC)

**DECLARATION OF BERNARDO
FRANCO**

BERNARDO N. DE MELLO FRANCO, declares under the penalty of perjury, as follows:

1. I am a member of the Bar of this Court and counsel for VistaJet US Inc. (“VistaJet”). I submit this declaration (“Franco Decl.”) in support of VistaJet’s Motion for Summary Judgment (the “Motion”).

2. Annexed hereto as **Exhibit 1** is a true and correct copy of Leona Qi’s (“Qi”) Declaration.

3. Annexed hereto as **Exhibit 2** is a true and correct copy of an excerpted transcript of the deposition of Ian Moore (“Moore”) in the instant action, which occurred on December 8, 2022 (“Moore Deposition”).

4. Annexed hereto as **Exhibit 3** is a true and correct copy of an excerpted transcript of the deposition of Leona Qi (“Qi”) in the instant action, which occurred on December 6-7, 2022 (“Qi Deposition”).

5. Annexed hereto as **Exhibit 4** is a true and correct copy of the April 1, 2020

executed Program Agreements entered into between SB Group US, Inc. (“SoftBank”) and VistaJet and identified as VJ00005033.

6. Annexed hereto as **Exhibit 5** is a true and correct copy of Peter McDermott (“McDermott”) email dated March 10, 2020 and identified as VJ00004558.

7. Annexed hereto as **Exhibit 6** is a true and correct copy of an excerpted transcript of the deposition of Michael Rodgers (“Rodgers”) in the instant action, which occurred on January 26, 2023 (“Rodgers Deposition”).

8. Annexed hereto as **Exhibit 7** is a true and correct copy of Christine Kennedy (“Kennedy”) email dated February 25, 2022 and identified as FCA023037.

9. Annexed hereto as **Exhibit 8** is a true and correct copy of an excerpted transcript of the deposition of Brian Proctor (“Proctor”) in the instant action, which occurred on January 25, 2023 (“Proctor Deposition”).

10. Annexed hereto as **Exhibit 9** is a true and correct copy of the non-disclosure agreement entered into between FCA and SoftBank FCA023146.

11. Annexed hereto as **Exhibit 10** is a true and correct copy of Proctor’s email dated March 22, 2022 and identified as FCA002874.

12. Annexed hereto as **Exhibit 11** is a true and correct copy of Jim Lewis’ (“Lewis”) email dated March 8, 2022 and identified as FCA003040.

13. Annexed hereto as **Exhibit 12** is a true and correct copy of Lewis’ email dated March 5, 2022 and identified as FCA023066.

14. Annexed hereto as **Exhibit 13** is a true and correct copy of an excerpted transcript of the deposition of Cameron Gowans (“Gowans”) in the instant action, which occurred on January 24, 2023 (“Gowans Deposition”).

15. Annexed hereto as **Exhibit 14** is a true and correct copy of Proctor's chat conversation with Rob Wechsler and identified as FCA033791.

16. Annexed hereto as **Exhibit 15** is a true and correct copy of Proctor's email dated February 27, 2022 and identified as FCA023598.

17. Annexed hereto as **Exhibit 16** is a true and correct copy of Proctor's email dated March 3, 2022 and identified as FCA023634.

18. Annexed hereto as **Exhibit 17** is a true and correct copy of Proctor's email dated April 1, 2022 and identified as FCA023634, which contains as an attachment the Assignment and Assumption Agreement ("Assignment Agreement") between VistaJet, FCA and SoftBank and identified as FCA021897-934.

19. Annexed hereto as **Exhibit 18** is a true and correct copy of Proctor's email dated Juen 13, 2022 and identified as FCA21451.

20. Annexed hereto as **Exhibit 19** is a true and correct copy of Dawn Watkins' ("Watkins") email dated Mars 31, 2022 and identified as FCA002384.

21. Annexed hereto as **Exhibit 20** is a true and correct copy of Watkins' email dated April 1, 2022 and identified as FCA002430.

22. Annexed hereto as **Exhibit 21** is a true and correct copy of Alina Bosanac's ("Bosanac") email dated April 1, 2022 and identified as FCA022604.

23. Annexed hereto as **Exhibit 22** is a true and correct copy of an excerpted transcript of the deposition of Brian Goldfeder ("Goldfeder") in the instant action, which occurred on January 20, 2023 ("Goldfeder Deposition").

24. Annexed hereto as **Exhibit 23** is a true and correct copy of Gowans' email dated March 15, 2022 and identified as FCA005003.

25. Annexed hereto as **Exhibit 24** is a true and correct copy of Gowans' email dated March 25, 2022 and identified as FCA005036.

26. Annexed hereto as **Exhibit 25** is a true and correct copy of correct copy of USPTO record for Reg. No. 6945352 for VISTA.

27. Annexed hereto as **Exhibit 26** is a true and correct copy of the mark VistaJet Registration and identified as VJ00002589.

28. Annexed hereto as **Exhibit 27** is a true and correct copy of the mark VistaJet Registration and identified as VJ00002660.

29. Annexed hereto as **Exhibit 28** is a true and correct copy of the mark VistaJet Registration and identified as VJ00002828.

30. Annexed hereto as **Exhibit 29** is a true and correct copy of USPTO record for Reg. No. 6945352 for VISTA.

31. Annexed hereto as **Exhibit 30** is a true and correct copy of the Declaration of Erik Romano ("Romano Decl.") together with its exhibits.

32. Annexed hereto as **Exhibit 31** is a true and correct copy of VISTAJET brochure depicting VistaJet marks, photographs and diagrams of VistaJet aircraft and identified as VJ00003222.

33. Annexed hereto as **Exhibit 32** is a true and correct copy of VISTAJET brochure depicting VistaJet marks and photographs and diagrams of VistaJet aircraft and identified as VJ00003371.

34. Annexed hereto as **Exhibit 33** is a true and correct copy of VISTAJET brochure depicting VistaJet marks and photographs and diagrams of VistaJet aircraft and identified as; VJ00009005.

35. Annexed hereto as **Exhibit 34** is a true and correct copy of one of a VistaJet promotional emails identified VJ00003423.

36. Annexed hereto as **Exhibit 35** is a true and correct copy of VistaJet trademark registration for March 2021 Photos of VistaJet Global 6000 Aircraft and identified as VJ00003108.

37. Annexed hereto as **Exhibit 36** is a true and correct copy of the declaration of Simone Migliaccio.

38. Annexed hereto as **Exhibit 37** is a true and correct copy of VistaJet's Amendment to Exclusive Copyright License Agreement, identified as VJ00003106.

39. Annexed hereto as **Exhibit 38** is a true and correct copy of article dated August 13, 2021, "Three Steps to Private Air Perfection," and identified as VJ00009158.

40. Annexed hereto as **Exhibit 39** is a true and correct copy of the screenshot of the Global 5000 webpage identified as VJ00009145.

41. Annexed hereto as **Exhibit 40** is a true and correct copy of the archived screenshot of Global 5000 webpage dated May 22, 2022 and identified as VJ00009156.

42. Annexed hereto as **Exhibit 41** is a true and correct copy of the screenshot of Global 6000 webpage identified as VJ00009154.

43. Annexed hereto as **Exhibit 42** is a true and correct copy of the archived screenshot of Global 6000 webpage dated April 6, 2022 and identified as VJ00009152.

44. Annexed hereto as **Exhibit 43** is a true and correct copy of the archived screenshot of Global 6000 webpage dated April 30, 2022 and identified as VJ00009167.

45. Annexed hereto as **Exhibit 44** is a true and correct copy of the VISTA 2021 Annual Report identified as VJ00003203.

46. Annexed hereto as **Exhibit 45** is a true and correct copy of the Terms and Conditions of the Loyalty Program identified as VJ00012047.

47. Annexed hereto as **Exhibit 46** is a true and correct copy of an example of Loyalty Program agreement incorporating Terms and Conditions and identified as VJ00012064.

48. Annexed hereto as **Exhibit 47** is a true and correct copy of VistaJet PPAP Terms and Conditions identified as VJ00012065.

49. Annexed hereto as **Exhibit 48** is a true and correct copy of Iain Rubli's email dated November 1, 2016 regarding YouTube's removal of infringing content following VistaJet's copyright complaint, and identified as VJ00009072.

50. Annexed hereto as **Exhibit 49** is a true and correct copy of Matteo Atti ("Atti") email, dated August 7, 2017 attaching cease and desist letter regarding the use of VistaJet photo on Instagram, and identified as VJ00009079.

51. Annexed hereto as **Exhibit 50** is a true and correct copy of Christopher Scanlan's email dated August 9, 2017 and identified as VJ00009082.

52. Annexed hereto as **Exhibit 51** is a true and correct copy of Joana David's email dated March 14, 2018 and identified as VJ00009094.

53. Annexed hereto as **Exhibit 52** is a true and correct copy of Course Hero Compliance Team dated July 12, 2022 and identified as VJ00009116.

54. Annexed hereto as **Exhibit 53** is a true and correct copy of Fiona Bareli's cease and desist email dated November 22, 2022 and identified as VJ00009132.

55. Annexed hereto as **Exhibit 54** is a true and correct copy of Todd Mascarenhas' email dated November 23, 2022 and identified as VJ00009136.

56. Annexed hereto as **Exhibit 55** is a true and correct copy of archived screenshot

of VistaJet Legal Information page from May 22, 2022, identified as VJ00009147.

57. Annexed hereto as **Exhibit 56** is a true and correct copy of screenshot of Legal Information page from December 21, 2022, identified as VJ00009164.

58. Annexed hereto as **Exhibit 57** is a true and correct copy of “Insight with Vista” FCA’s marketing Deck brochure, identified as FCA004987.

59. Annexed hereto as **Exhibit 58** is a true and correct copy of Cameron Gowans chat conversation with Kim Lewis, identified as FCA036920.

60. Annexed hereto as **Exhibit 59** is a true and correct copy of Proctor’s email dated April 4, 2022, which includes FCA plan of action and intention to disseminate the Brochure to 280-300 prospects, and identified as FCA000489.

61. Annexed hereto as **Exhibit 60** is a true and correct copy of Michael Rodgers’ email, dated April 9, 2022 and identified as FCA002566.

62. Annexed hereto as **Exhibit 61** is a true and correct copy of Steve Main’s email, dated May 19, 2022 and identified as FCA001259.

63. Annexed hereto as **Exhibit 62** is a true and correct copy of Proctor’s email, dated April 21, 2022 and identified as FCA002232.

64. Annexed hereto as **Exhibit 63** is a true and correct copy of Proctor’s email, dated April 21, 2022 and identified as FCA002189.

65. Annexed hereto as **Exhibit 64** is a true and correct copy of Vince Restivo’s email, dated May 27, 2022 and identified as FCA029091.

66. Annexed hereto as **Exhibit 65** is a true and correct copy of FCA’s answer to VistaJet Interrogatories.

67. Annexed hereto as **Exhibit 66** is a true and correct copy of Rodgers’ email dated

June 12, 2022 and identified as FCA028103.

68. Annexed hereto as **Exhibit 67** is a true and correct copy of Vincent Kavanagh (“Kavanagh”) email dated June 11, 2022, identified as FCA020941.

69. Annexed hereto as **Exhibit 68** is a true and correct copy of an excerpted transcript of the deposition of Kavanagh in the instant action, which occurred on December 2, 2022 (“Kavanagh Deposition”).

70. Annexed hereto as **Exhibit 69** is a true and correct copy of Kavanagh’s email dated July 4, 2022 and identified as FCA031180.

71. Annexed hereto as **Exhibit 70** is a true and correct copy of Proctor’s chat conversation with Kavanagh, identified as FCA033766.

72. Annexed hereto as **Exhibit 71** is a true and correct copy of Kavanagh chat conversation with Yonel and identified as FCA031373.

73. Annexed hereto as **Exhibit 72** is a true and correct copy of VistaJet agreement and identified as FCA021897.

74. Annexed hereto as **Exhibit 73** is a true and correct copy of Jim Lewis’ (“Lewis”) email dated April 8, 2022 and identified as FCA035434.

75. Annexed hereto as **Exhibit 74** is a true and correct copy of Lewis’ email dated April 18, 2022 and identified as FCA002135.

76. Annexed hereto as **Exhibit 75** is a true and correct copy of Jay Bushouse’s email dated May 27, 2022 and identified as FCA035246.

77. Annexed hereto as **Exhibit 76** is a true and correct copy of Lewis’ email dated June 3, 2022 and identified as FCA029128.

78. Annexed hereto as **Exhibit 77** is a true and correct copy of Kyle Wagman’s

email dated May 9, 2022, and identified as FCA001896.

79. Annexed hereto as **Exhibit 78** is a true and correct copy of EF Falcon's agreement with FCA, identified as FCA000099.

80. Annexed hereto as **Exhibit 79** is a true and correct copy of DB Projects LLC's agreement with FCA, identified as FCA001344.

81. Annexed hereto as **Exhibit 80** is a true and correct copy of Coca-Cola's agreement with FCA, identified as FCA005124.

82. Annexed hereto as **Exhibit 81** is a true and correct copy of Pat Wallace's email dated May 18, 2022 and identified as FCA003969.

83. Annexed hereto as **Exhibit 82** is a true and correct copy of AXS Notice and Take-down Letter, identified as FCA020871.

84. Annexed hereto as **Exhibit 83** is a true and correct copy of Kavanagh's email dated July 4, 2022 and identified as FCA031180.

85. Annexed hereto as **Exhibit 84** is a true and correct copy of Kavanagh's email dated July 6, 2022 and identified as FCA029546.

86. Annexed hereto as **Exhibit 85** is a true and correct copy of Kavanagh's email dated July 8, 2022 and identified as FCA031143.

87. Annexed hereto as **Exhibit 86** is a true and correct copy of Kavanagh's email dated July 4, 2022 and identified as FCA036655.

88. Annexed hereto as **Exhibit 87** is a true and correct copy of VistaJet's Amended Answer to FCA's 1st Set of Interrogatories and VistaJet's Answer to Second Set of Interrogatories.

89. Annexed hereto as **Exhibit 88** is a true and correct copy of VistaJet's Program

Agreements with FCA identified as FCA021897.

90. Annexed hereto as **Exhibit 89** is a true and correct copy of an excerpted transcript of the deposition of Thomas Flohr (“Flohr”) in the instant action, which occurred on February 22, 2023 (“Flohr Deposition”).

91. Annexed hereto as **Exhibit 90** is a true and correct copy of Proctor’s email dated August 1, 2022 and identified as FCA022460.

92. Annexed hereto as **Exhibit 91** is a true and correct copy of an excerpted transcript of the deposition of Joseph Abarno (“Abarno”) in the instant action, which occurred on January 24, 2023 (“Abarno Deposition”).

93. Annexed hereto as **Exhibit 92** is a true and correct copy of Kavanagh’s email dated July 19, 2022 and identified as FCA031350.

Dated: May 26, 2023

Respectfully submitted,

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